

*Jones*



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Vista Scientific Corporation

**File:** B-233114

**Date:** January 24, 1989

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### DIGEST

Bid was properly rejected as nonresponsive where standard form containing the bidder's general terms and conditions of sale included with bid documents made bid ambiguous as to whether the bidder intended to comply with material terms of the solicitation.

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### DECISION

Vista Scientific Corporation protests the rejection of its low bid as nonresponsive under invitation for bids (IFB) No. N00421-88-B-0259, issued by the Department of the Navy for one temperature/humidity altitude test chamber and two high/low temperature humidity test chambers. The Navy concluded that a form entitled "Terms and Conditions of Sale" that Vista submitted with its low bid for the first item took exception to several IFB requirements and rejected the bid as nonresponsive.

We deny the protest.

Vista argues that the form was included with its bid only to satisfy IFB clause K-11 which required bidders to submit the terms of their standard commercial warranty if one was available for the product offered. Vista argues that the remaining provisions on its standard boilerplate sheet which contains, among other things, delivery and payment terms that are inconsistent with those in the IFB are merely for promotional purposes. According to the protester, the form includes information completely irrelevant to the acceptability of the product and should, therefore, not have been considered with its bid. We disagree.

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While the solicitation did request information concerning a bidder's warranty it clearly did not ask for any type of data or information on numerous areas, such as patent indemnity and design changes, included in the form nor did it ask for information also included in the form concerning the bidder's alternate terms of payment or delivery.

While material which is not needed for bid evaluation generally is considered to be informational only, any literature submitted will cause a bid to be nonresponsive if it establishes that the bidder intended to qualify its bid or if the literature reasonably creates a question as to what the bidder is offering and on what terms. See Tektronix, Inc., et al., B-227800 et al., Sept. 29, 1987, 87-2 CPD ¶ 315.

A bidder's intention to be bound by the solicitation requirements and provide the requested items must be determined from the bid itself, including any unsolicited information, at the time of bid opening. See Washington Printing Supplies, Inc., B-227048, July 10, 1987, 87-2 CPD ¶ 34. Although Vista now states that the form was no more than "fine print" typically included in promotional material and should have been referred to only with respect to the warranty provision,<sup>1/</sup> no such statement was submitted with the bid. Since only material available at bid opening may be considered in making a responsiveness determination, Vista's protest statements concerning its intent cannot be now considered in determining the responsiveness of its bid. Id. Consequently, the contracting officer properly considered the form in reviewing Vista's bid.

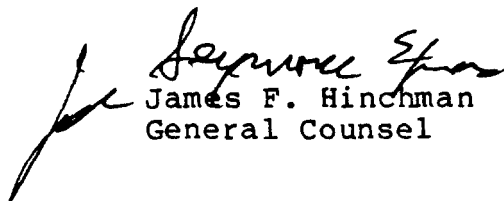
Finally, Vista argues that there was no rational basis for the contracting officer to conclude that the delivery and payment terms or the standard sheet were meant to override the terms of the solicitation which it had explicitly agreed to by execution of the bid documents. At best, the exception in Vista's sheet to the f.o.b. delivery point and other provisions in the IFB made its bid ambiguous and it is well settled that an ambiguous bid in such circumstances must be rejected as nonresponsive. See Washington Printing Supplies, Inc., B-227048, supra. Again, this conclusion is

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<sup>1/</sup> According to Vista, its entire standard sheet was submitted along with its other bid documents instead of only the warranty provision due to a clerical error.

not changed by the fact that Vista may not have intended to modify the IFB terms and conditions. See Ansonia Copper & Brass, Inc., B-227002, July 23, 1987, 87-2 CPD ¶ 76.

The protest is denied.

  
James F. Hinchman  
General Counsel